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The Process of Termination an Employment Contract with an Employee of a Foreign Embassy

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Annotation: The author in this article aims theoretically demonstrate issues related to the applicable law in labor relations with a subject of international law. In particular, the regulation of labor relations in the context of international law and in general how it affects labor relations. The task of this work is to provide arguments regarding the applicable law in labor relations, how it is regulated by local state norms and international norms, and meantime the impact of international norms to local state norms. This paper provides an example of relevant practical cases and conclusions based on the results of the analysis.

Keywords: applicable law, international law, labor law, Uzbekistan, UN conventions, foreign embassy.

"Jusgentium" is a science more commonly known in academia as international law is a system of legal principles and norms regulating relations not between peoples, but between States having an international character.[1]

The fundamental principles of international law stipulates that the subjects of this science, namely, the State to maintain public functions, exercise the rights of sovereignty and has a special public status, which recognizes the immunity from judicial jurisdiction and coercive measures of host country.[2]

The condition of international law was characterized vague and amorphous in the recent past, now it has become a highly organized system of norms. However, this article provides an argument showing the reverse side of this definition. Namely, international law even after several decades still has plots for the resolution that leads to a dilemma in particularly on the matters of applicable law.

The Charter of the UN and the Convention on Jurisdictional Immunities of States and Their Property, and other documents stipulates the principle of State immunity in international law. Generally based on these norms of international law, the national legislations of UN member countries, including Uzbekistan, recognize the immunity of foreign States from the jurisdiction of courts or another State and enforcement measures of a coercive nature.

The main objective of this article is to consider the issues of the institution of applicable law, namely the limits of the jurisdiction of the State in quasi-territories as an embassy - a top-level diplomatic mission headed by an Extraordinary and Plenipotentiary Ambassador. The Author based on the legal case makes analysis on the legitimacy of the application of labor

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[1] Международное право. Общая часть : учеб. для студентов юрид. фак. и вузов / И.И. Лукашук; Рос. акад. наук, Ин-т государства и права, Академ. правовой ун-т. - Изд. 3'е, перераб. и доп. - М. : Волтерс Клувер, 2005. - 432 с. - (Серия «Библиотека студента»). — ISBN 5-466-00103-1 (в пер.).
[2]

law norms of the host country in relation to an employee of the Embassy of a foreign state. The next task is to look through the questions about the applicable law, particularly regarding the application of labor standards both in and outside the territory of the State, thereby considering the issue of exclusive right - the immunity of the embassy territory from the jurisdiction of the host country.

The Ambassador as a head of the mission as well as the Embassy of State "A" due to the expiration of the employment contract of the employee considered to terminate the employment contract with an employee of the Embassy. The employee is a citizen of Uzbekistan, and the employee is not a member of the diplomatic staff of the State “A”. However, the place of work is an embassy – a quasi-laboratory that does not obey the jurisdiction of the host country.

The dilemma of the case lies in the fact that the employee is a citizen of Uzbekistan and the labor legislation of that country has several norm regarding the protection and insuring the working conditions of labor law subjects. Uzbekistan’s labor code has articles increasingly complex and many impediments on the process of termination an employment contract with an employee due to the expiration of the date. Mainly, if the work has continuous nature and it is not seasonal or temporary, so the legislation prohibits concluding the employment contract for a short time with an employee. Additionally, after the expiration of the date an employer cannot terminate the contract by own will. Meantime, the legislation of the country representing the Embassy of the State “A” provides an employer with such right to terminate the employment contract by initiative of an employer. In this regard, the question arises regarding the applicable law, the law of which State in this case applies to the employee.

The labor legislation of the Republic of Uzbekistan (hereinafter RoU) provides for compliance with the norms of the Labor Code (hereinafter LC) throughout the territory of the State. In accordance with Article 12 of the LC of RoU, the labor legislation of the RoU is applied at enterprises owned wholly or partially by foreign legal entities and individuals located on the territory of the RoU. The existence of this article testifies and confirms the fact of ensuring and guaranteeing the rights of an employee by the LC. A brief analysis of this article stipulates that the LC of RoU should guide an enterprise, regardless of the nature of its legal status, even if it belongs to foreigners; (in our case, the employee is a citizen of the RoU). Another important point is the status of the embassy by the nature of its activity is not an enterprise and the embassy is a quasi-territory, under the jurisdiction of the flag of the country, which it represents. Consequently, this norm can be qualified in relation to foreign investors and foreign enterprises engaged in entrepreneurial activity on the territory of the RoU, while employing workers from the local labor market.

According to the Regulation "On diplomatic missions and consular offices of foreign states in the Republic of Uzbekistan” the embassy is a diplomatic representation of a foreign state.[3] Substantial aspect of this issue is the special status of the territory of the Embassy located in the RoU. Consequently, these premises and their furnishings belongs to the diplomatic mission and the embassy exercising immunity from the jurisdiction of the host country. The Vienna Convention on Diplomatic Relations also stipulates such norm regarding the inviolability of embassy premises; no one has the right to enter the territory of the representative office except with the consent of the representative office and outside the jurisdiction of the host country.

It is also seems necessary to note that Article 11 of the UN Convention on "Jurisdictional Immunities of States and Their Property" provides that if there is an agreement between two States (an international agreement; a written contract; an application to the court or a written

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[3] approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 207 dated 08.05.2001,

communication in the context of a specific proceeding), the State cannot invoke immunity from jurisdiction in court proceedings another state. However, it should be taken into account that, regardless of the above agreements, if the subject of the proceedings is hiring, renewal of hiring or reinstatement, then this rule is not applied. As a result, it concludes that labor disputes concerning the reinstatement of an employee at work, the hiring of an employee does not belong to the jurisdiction of the courts of the RoU.

Taking into account abovementioned, as well as the results of the analysis, the following conclusions presented:

- The Embassy, when hiring a citizen of the RoU for the position of technical personnel should follow the legislation of the country the embassy is representing, thereby the application of the norms of the labor legislation of the RoU has the character of inadmissibility. The LC of the RoU article 12 protects the rights of an employee, but the principles of international law indirectly provide the legislation of the applicable law.
- The LC of the RoU provides the right to apply to the court for the resolution of labor disputes, and for the protection of labor rights both an employee and an employer. However, according to the UN Convention on "Jurisdictional Immunities of States and Their Property" and Regulation "On diplomatic missions and consular offices of foreign states in the Republic of Uzbekistan” local judicial authorities do not have jurisdiction over the members of diplomatic staff. The labor law of the RoU provides only for issues of jurisdiction over foreign citizens without diplomatic rank. Consequently, in this case, the norms of the RoU are also not applicable;
- In this case it is preferable to specify the applicable law in advance during the employment period in a separate paragraph in employment contracts. Identify ways to resolve labor disputes if they arise. Inform the employee about the embassy exclusive status and applicable law rules.

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